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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,367	05/29/2001	Rita Kumar	11378.14USC1	6299

23552 7590 07/02/2003

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EXAMINER
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WANG, SHENGJUN

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 07/02/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/867,367

Applicant(s)

KUMAR ET AL.

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on January 30 & April 3, 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 1,7 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

Receipt of applicants' amendments and remarks submitted January 30, 2003; and the 132 declaration by Rita Kumar submitted April 3, 2003 is acknowledged.

#### ***Claim Rejections 35 U.S.C. 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyer et al. (U), Boyer et al. (V) in view of Horikoshi et al. (A), Colaruotolo et al. (B), Boyer et al. (IDS), Takowa et al. (IDS) and Jones (IDS) for reasons set forth in the prior office action.

#### ***Response to the Arguments***

Applicants' amendments and remarks submitted January 30, 2003 have been fully considered, but are not persuasive for reasons discussed below.

Applicants argue that the cited references do not teach or suggest step (j), which recites "mixing said selected bacterial strains from step (i) to obtain mixed bacterial suspension." Applicants particularly argue that there is no teaching of combination of the selected strain. The arguments are not probative. As stated in the prior office action: "The optimization of the media and the particular procedure for selection and acclimation using old and well known media ingredients, such as tryptone, soy flour, carbonate, etc, and old and well known steps, such as inoculation, centrifuge, or isolation, is seen to be an optimization of a result effective parameter, and is considered within the skill of the artisan, absent evidence to the contrary. See, In re

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Boesch and Slaney (CCPA) 204 USPQ 215.” One of ordinary skill in the art would have known that all the selected bacteria strains are useful for wastewater treatment. Whether to keep the strains separately or together accordingly is a matter of optimization in the process of isolation. Further, it is prima facie obvious to combine two compositions each of which is taught in the prior art to be useful for same purpose in order to form third composition that is to be used for very the same purpose; idea of combining them flows logically from their having been individually taught in prior art; See In re Kerkhoven, 205 USPQ 1069.

3. The declaration under 37 CFR 1.132 filed April 3, 2003 is insufficient to overcome the rejection of claims 2-6 based upon 35 U.S.C. 103 as set forth in the last Office action because: It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.
4. Note the rejected claims are directed to a method of preparation of a microbial composition useful for alkaline wastewater treatment. As discussed in the prior office action, and above, the method is obvious over cited prior art. In the declaration affirm that applicants employed the claimed method, and isolated, acclimated two particular bacterial strains, which upon combination yield a synergistic effect in alkaline wastewater treatment. The two isolated strains CBTCC/micro/8 and CBTCC/micro/9 are alleged to be similar to ATCC No. 27647 and ATCC No. 27557. Based on the alleged synergistic and unexpected results, applicants believe the claims are unobvious over the cited prior arts. However, the declaration, or the specification, does not provide evidence to assure that the method herein claimed would universally lead to the isolation of CBTCC/micro/8 and CBTCC/micro/9, or similar pair of strains which would exhibit

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the synergistic effect as CBTCC/micro/8 and CBTCC/micro/9 do. Microorganisms are highly unpredictable. Sewage from different location may not contain exact microbial profiles, particularly, sewage from different location may not contain the exact two bacterial strains herein, or similar pair of strains which would exhibit the synergistic effect as CBTCC/micro/8 and CBTCC/micro/9 do. In fact, there is no evidence showing that ATCC No. 27647 and ATCC No. 27557 have the similar synergistic effect herein. The alleged synergistic effect and unexpected results do not solely reside on the claimed method.

5. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Patent Examiner

**SHENGJUN WANG**  
**PATENT EXAMINER**

Shengjun Wang

June 20, 2003